

AO 240 (Rev. 6/86) Application to Proceed

United States District Court

WESTERN

DISTRICT OF

PENNSYLVANIA

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

JOHN BAX

'06 OCT 12 A10:53

WARDEN, FCI MCKEAN

V.
CLERK

U.S. DISTRICT COURT

CASE NUMBER: 05-194(ERIE)

CLERK
U.S. DISTRICT COURTI, JOHN BAX, declare that I am the (check appropriate box)☒ petitioner/plaintiff☐ movant (filing 28 U.S.C. 2255 motion)☐ respondent/defendant☐ _____
other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows: The Court's denial of the petition for a writ habeas corpus is clearly erroneous. The claim raise clearly demonstrates that Petitioner was actually innocent of the conduct used to enhance his sentence. The actual innocence provisions promulgated in In Re Dorsainvil, 119 F.3d 245, 251 (CA 3, 1997), also support Petitioner's claims as it specifies that extraordinary circumstances constitutes a rubric of inadequate or ineffective remedy. Because actual innocence is an extraordinary circumstance, the fact that Petitioner's innocence implicates his sentence and not his underlying conviction, is not dispositive. Cristin v. Brennan, 281 F.3d 404, 421 (CA 3, 2002). Because I am indigent, I do not have the resources to remit the cost for filing and prosecuting this matter on appeal. Hence, leave to proceed in forma pauperis is requested.

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes ☒ No ☐

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

I am currently employed as a unit orderly. This prison job assignment pay a nominal monthly stipend that varies from month to month depending on the unit budget. Attached is a Statement of my Prison Account Activity which provides a monthly account of this pay stipend.

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or other form of self-employment Yes ☐ No ☒b. Rent payments, interest or dividends? Yes ☐ No ☒c. Pensions, annuities or life insurance payments? Yes ☐ No ☒d. Gifts or inheritances? Yes ☐ No ☒e. Any other sources? Yes ☐ No ☒

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

N/A

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes ☒ No ☐ (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☒

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10-5-06
(Date)

Joh Bex
Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ _____
on account to his credit at the _____
institution where he is confined. I further certify that the applicant likewise has the following securities to
his credit according to the records of said institution: _____

I further certify that during the last six months the applicant's average balance was \$ _____

Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

United States Judge

Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

United States Judge
or Magistrate

Date

Inmate Statement



Inmate Reg #:	07328067	Current Institution:	McKean FCI
Inmate Name:	BAX, JOHN	Housing Unit:	A
Report Date:	10/09/2006	Living Quarters:	A02-218U
Report Time:	8:21:15 AM		

<u>Alpha</u>	<u>Date/Time</u>	<u>Reference#</u>	<u>Payment#</u>	<u>Receipt#</u>	<u>Transaction Type</u>	<u>Transaction Amount</u>	<u>Encumbrance Amount</u>	<u>Ending Balance</u>
MCK	7/6/2006 9:34:31 PM	ITS0706			Phone Withdrawal	(\$8.00)		\$130.92
MCK	7/5/2006 12:02:43 PM	143			Sales	(\$81.20)		\$138.92
MCK	7/3/2006 5:40:04 PM	ITS0703			Phone Withdrawal	(\$10.00)		\$220.12
MCK	7/2/2006 2:17:24 PM	33319706			Western Union	\$200.00		\$230.12
MCK	7/1/2006 7:22:14 AM	ITS0701			Phone Withdrawal	(\$10.00)		\$30.12
MCK	6/29/2006 7:51:43 PM	ITS0629			Phone Withdrawal	(\$5.00)		\$40.12
MCK	6/27/2006 9:18:08 PM	ITS0627			Phone Withdrawal	(\$5.00)		\$45.12
MCK	6/22/2006 9:48:31 PM	ITS0622			Phone Withdrawal	(\$5.00)		\$50.12
MCK	6/22/2006 7:07:28 PM	ITS0622			Phone Withdrawal	(\$7.00)		\$55.12
MCK	6/19/2006 5:19:05 PM	72			Sales	(\$108.85)		\$62.12
MCK	6/15/2006 11:12:32 AM	33318506			Western Union	\$60.00		\$170.97
MCK	6/12/2006 7:27:48 PM	ITS0612			Phone Withdrawal	(\$10.00)		\$110.97
MCK	6/10/2006 2:16:46 PM	33318106			Western Union	\$120.00		\$120.97
MCK	6/9/2006 9:13:57 PM	ITS0609			Phone Withdrawal	(\$10.00)		\$0.97
MCK	6/8/2006 7:36:25 AM	FIPP0506			Payroll - IPP	\$0.60		\$10.97
MCK	6/7/2006 9:17:28 PM	ITS0607			Phone Withdrawal	(\$7.00)		\$10.37
MCK	6/5/2006 4:58:42 PM	40			Sales	(\$83.45)		\$17.37
MCK	6/4/2006 8:58:58 AM	ITS0604			Phone Withdrawal	(\$5.00)		\$100.82
MCK	6/2/2006 9:28:53 PM	ITS0602			Phone Withdrawal	(\$14.00)		\$105.82
MCK	6/1/2006 2:20:00 PM	33317506			Western Union	\$60.00		\$119.82
MCK	5/31/2006 5:42:55 AM	70158801			Lockbox - CD	\$50.00		\$59.82
MCK	5/30/2006 8:11:02 AM	47			Sales	(\$85.35)		\$9.82
MCK	5/27/2006 11:46:54 AM	ITS0527			Phone Withdrawal	(\$5.00)		\$95.17
MCK	5/27/2006 5:38:58 AM	70158701			Lockbox - CD	\$100.00		\$100.17
MCK	5/17/2006 4:53:50 PM	ITS0517			Phone Withdrawal	(\$10.00)		\$0.17
MCK	5/16/2006 7:35:12 PM	ITS0516			Phone Withdrawal	(\$10.00)		\$10.17
MCK	5/15/2006 5:28:11 PM	ITS0515			Phone Withdrawal	(\$10.00)		\$20.17
MCK	5/12/2006 7:05:14 PM	ITS0512			Phone Withdrawal	(\$10.00)		\$30.17
MCK	5/8/2006 5:12:09 PM	ITS0508			Phone Withdrawal	(\$6.00)		\$40.17
MCK	5/8/2006 4:52:33 PM	73			Sales	(\$64.70)		\$46.17
MCK	5/5/2006 7:44:59 AM	FIPP0406			Payroll - IPP	\$10.00		\$110.87
MCK	5/4/2006 6:02:40 PM	ITS0504			Phone Withdrawal	(\$10.00)		\$100.87
MCK	4/29/2006 7:07:37 PM	ITS0429			Phone Withdrawal	(\$10.00)		\$110.87

Inmate Statement



Inmate Reg #:	07328067	Current Institution:	McKean FCI
Inmate Name:	BAX, JOHN	Housing Unit:	A
Report Date:	10/09/2006	Living Quarters:	A02-218U
Report Time:	8:19:37 AM		

Alpha Code	Date/Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
MCK	10/7/2006 8:59:36 PM	ITS1007			Phone Withdrawal	(\$1.00)		\$5.86
MCK	10/7/2006 11:54:16 AM	ITS1007			Phone Withdrawal	(\$1.00)		\$6.86
MCK	10/6/2006 8:00:09 AM	GIPP0906			Payroll - IPP	\$5.52		\$7.86
MCK	10/5/2006 7:08:54 AM	2			Sales	(\$37.90)		\$2.34
MCK	10/1/2006 1:46:43 PM	ITS1001			Phone Withdrawal	(\$14.00)		\$40.24
MCK	9/26/2006 9:52:59 PM	ITS0926			Phone Withdrawal	(\$5.00)		\$54.24
MCK	9/26/2006 9:13:15 PM	ITS0926			Phone Withdrawal	(\$1.00)		\$59.24
MCK	9/23/2006 7:11:53 PM	ITS0923			Phone Withdrawal	(\$5.00)		\$60.24
MCK	9/20/2006 9:16:59 PM	ITS0920			Phone Withdrawal	(\$4.00)		\$65.24
MCK	9/19/2006 4:50:56 PM	55			Sales	(\$41.35)		\$69.24
MCK	9/15/2006 5:44:49 PM	ITS0915			Phone Withdrawal	(\$5.00)		\$110.59
MCK	9/12/2006 6:36:48 PM	ITS0912			Phone Withdrawal	(\$6.00)		\$115.59
MCK	9/12/2006 5:03:24 PM	58			Sales	(\$129.75)		\$121.59
MCK	9/12/2006 1:17:09 PM	33324806			Western Union	\$200.00		\$251.34
MCK	9/12/2006 6:10:30 AM	70166001			Lockbox - CD	\$50.00		\$51.34
MCK	9/9/2006 7:39:27 PM	ITS0909			Phone Withdrawal	(\$5.00)		\$1.34
MCK	9/9/2006 12:13:09 PM	ITS0909			Phone Withdrawal	(\$5.00)		\$6.34
MCK	9/8/2006 5:42:22 AM	FIPP0806			Payroll - IPP	\$5.52		\$11.34
MCK	9/4/2006 9:05:23 PM	ITS0904			Phone Withdrawal	(\$5.00)		\$5.82
MCK	9/2/2006 2:18:31 PM	ITS0902			Phone Withdrawal	(\$10.00)		\$10.82
MCK	9/1/2006 8:50:03 PM	ITS0901			Phone Withdrawal	(\$10.00)		\$20.82
MCK	8/31/2006 8:26:36 PM	ITS0831			Phone Withdrawal	(\$5.00)		\$30.82
MCK	8/24/2006 11:13:17 AM	67			Sales	(\$10.00)		\$35.82
MCK	8/23/2006 8:57:27 PM	ITS0823			Phone Withdrawal	(\$5.00)		\$45.82
MCK	8/21/2006 9:03:41 PM	ITS0821			Phone Withdrawal	(\$5.00)		\$50.82
MCK	8/16/2006 7:37:53 PM	ITS0816			Phone Withdrawal	(\$8.00)		\$55.82
MCK	8/16/2006 7:34:45 PM	ITS0816			Phone Withdrawal	(\$1.00)		\$63.82
MCK	8/15/2006 7:55:46 AM	33			Sales	(\$50.55)		\$64.82
MCK	8/13/2006 7:52:04 AM	ITS0813			Phone Withdrawal	(\$7.00)		\$115.37
MCK	8/13/2006 5:35:21 AM	70164002			Lockbox - CD	\$22.00		\$122.37
MCK	8/13/2006 5:35:18 AM	70164002			Lockbox - CD	\$40.00		\$100.37
MCK	8/12/2006 9:23:32 AM	ITS0812			Phone Withdrawal	(\$5.00)		\$60.37
MCK	8/9/2006 8:06:08 PM	ITS0809			Phone Withdrawal	(\$5.00)		\$65.37

MCK	8/8/2006	ITS0808		Phone Withdrawal	(\$5.00)	\$70.37
	6:11:28 PM					
MCK	8/7/2006	ITS0807		Phone Withdrawal	(\$5.00)	\$75.37
	6:09:12 PM					
MCK	8/7/2006	FIPP0706		Payroll - IPP	\$4.80	\$80.37
	8:43:03 AM					
MCK	8/2/2006	ITS0802		Phone Withdrawal	(\$9.00)	\$75.57
	5:05:17 PM					
MCK	8/1/2006	ITS0801		Phone Withdrawal	(\$13.00)	\$84.57
	6:04:13 PM					
MCK	8/1/2006	33321806		Western Union	\$30.00	\$97.57
	1:23:17 PM					
MCK	8/1/2006	39		Sales	(\$116.95)	\$67.57
	11:49:43 AM					
MCK	8/1/2006		2676	Books	(\$16.00)	\$184.52
	7:37:50 AM					
MCK	7/25/2006	70162601		Lockbox - CD	\$50.00	\$200.52
	5:41:02 AM					
MCK	7/22/2006	ITS0722		Phone Withdrawal	(\$10.00)	\$150.52
	7:32:51 PM					
MCK	7/20/2006	ITS0720		Phone Withdrawal	(\$5.00)	\$160.52
	5:13:54 PM					
MCK	7/19/2006	33320906		Western Union	\$60.00	\$165.52
	12:09:51 PM					
MCK	7/13/2006	ITS0713		Phone Withdrawal	(\$9.00)	\$105.52
	9:11:20 PM					
MCK	7/11/2006	35		Sales	(\$46.40)	\$114.52
	11:22:43 AM					
MCK	7/10/2006	33320206		Western Union	\$50.00	\$160.92
	11:13:40 AM					
MCK	7/8/2006	ITS0708		Phone Withdrawal	(\$10.00)	\$110.92
	1:25:32 PM					
MCK	7/7/2006	ITS0707		Phone Withdrawal	(\$10.00)	\$120.92
	8:53:05 PM					

1 2 3

Total Transactions: 113

Totals: (\$294.51) \$0.00

Current Balances

Alpha Code	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
MCK	\$5.86	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5.86
Totals:	\$5.86	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5.86

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOHN BAX,

Appellant,

Case No. 06-4187

vs.

WARDEN FCI MCKEAN,

Appellee.

CERTIFICATE OF SERVICE

The undersigned certifies that on the date below the original and three copies of the Motion to Proceed in Forma Pauperis with supporting Declaration and Statement of Prisoner Account Activity was conveyed to prison authorities for mailing in accordance with prison policy, with First Class U.S. Postage prepaid and properly addressed to the district court and party below.

Gregory C. Melucci, Esq.
Assistant U.S. Attorney
U.S. Courthouse & Post Office
700 Grant Street, Suite 4000
Pittsburgh, PA 15219

Clerk of the Court
U.S. District Court
Western District of Pennsylvania
P.O. Box 1820
Erie, PA 16507

Date: 10-5-06

John Bax
John Bax #07328-067
Appellant/Pro-se
FCI McKean/P.O. Box 8000
Bradford, PA 16701

October 8, 2006

John Bax #07328-067
FCI McKean
P.O. Box 8000
Bradford, PA 16701

Office of the Clerk
United States District Court
Western District of Pennsylvania
P.O. Box 1820
Erie, PA 16507

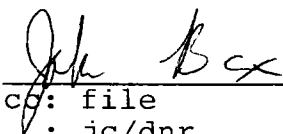
Re: John Bax v. Warden, FCI McKean:
Case No. 05-194(Erie)

Dear Clerk:

Please find enclosed for filing the original and three copies of Defendant's "Motion to Proceed in Forma Pauperis" with Supporting Declaration and Statement of Prison Account. Also, as required by the Third Circuit Court of Appeals, a Certificate of Service is enclosed.

Your assistance is greatly appreciated.

Sincerely,



cc: file

: jc/dnr
: AUSA Mellucci
: U.S. Court of Appeals